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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BERNADINE GRIFFITH, et al,

Plaintiff,

vs.

TIKTOK, INC, a corporation;
BYTEDANCE, INC., a corporation,

Defendants.

CASE NO. 5:23-cv-00964-SB-E

DISCOVERY MATTER

**EX PARTE APPLICATION FOR
LEAVE TO FILE MOTION TO
ENFORCE NOVEMBER 27, 2023
AND MARCH 18, 2024 ORDERS ON
SHORTENED TIME, AND FOR
RELIEF FROM REQUIREMENTS
OF LOCAL RULE 37-2**

[Filed Concurrently with Declaration of Christopher J. Lee; [Proposed] Order]

Magistrate Judge: Hon. Charles Eick
Action Filed: May 26, 2023
Trial Date: November 25, 2024

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that pursuant to Local Rule 7-19, Plaintiffs
3 respectfully apply *ex parte* for an order advancing the hearing date and shortening
4 time on Plaintiffs' Motion to Enforce November 27, 2023 and March 18, 2024 Orders
5 (Dkts. 78, 117), and relieving Plaintiffs of their obligation to comply with the
6 requirements of Local Rule 37-2 (the "Motion"). Specifically, Plaintiffs respectfully
7 request leave for the following:

8 (1) Plaintiffs to be relieved from the joint stipulation requirements of Local
9 Rule 37-2.

10 (2) Plaintiffs to file their moving papers within two court days of the order
11 granting this Application;

12 (3) Defendants to file their opposition within two court days of the filing of
13 Plaintiffs' moving papers;

14 (4) Plaintiffs to file their reply papers within one court day of the filing of
15 Defendants' opposition;

16 (5) Hearing to be set at the Court's earliest convenience before May 3, 2024.

17 This *Ex Parte* Application ("Application") is made on the grounds that the
18 Motion must be heard on shortened notice due to the urgent need for Plaintiffs to
19 obtain a complete sample of non-TikTok user data defendants "collect, generate, and
20 process" on a single day in advance of the May 3, 2024 deadline for Plaintiffs to file
21 their motion for class certification.

22 Pursuant to Local Rule 7-19, this Application is made following the notification
23 of all counsel of record on this case, as set forth in the accompanying Declaration of
24 Christopher J. Lee. Counsel of record's names and contact information are as follows:
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Inc. and ByteDance, Inc.**

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30 This Application is based upon this Notice and Application, the attached
31 Memorandum of Points and Authorities, the concurrently filed Declaration of
32 Christopher J. Lee, the Proposed Order, which is being lodged in accordance with
33 Local Rule 7-20, all papers and pleadings on file in this action, and upon such further
34 evidence and argument as may be presented to the Court in connection with this
35 Application.

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1 DATED: April 17, 2024

2 By: /s/ Christopher J. Lee
3 Christopher J. Lee

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This *Ex Parte* Application seeks the Court’s leave for Plaintiffs to file a Motion
4 to enforce the Court’s November 27, 2023 and March 18, 2024 Orders (Dkt. 78, 117)
5 (together, the “Orders”) on shortened time, in light of the urgent need for Plaintiffs to
6 obtain a complete sample of non-TikTok user data defendants “collect, generate, and
7 process” on a single day in advance of the May 3, 2024 deadline for Plaintiffs to file
8 their motion for class certification. Specifically, Plaintiffs respectfully request leave
9 for the following:

10 (1) Plaintiffs to be relieved from the joint stipulation requirements of Local
11 Rule 37-2;

12 (2) Plaintiffs to file their moving papers within two court days of the order
13 granting this Application;

14 (3) Defendants to file their opposition within two court days of the filing of
15 Plaintiffs’ moving papers;

16 (4) Plaintiffs to file their reply papers within one court day of the filing of
17 Defendants’ opposition; and

18 (5) Hearing to be set at the Court’s earliest convenience before May 3, 2024.

19 **II. RELEVANT BACKGROUND**

20 On November 27, 2023, the Court issued an order granting Plaintiffs’ motion
21 to compel and ordering Defendants to produce by December 11, 2023, *inter alia*, “a
22 sample of non-TikTok user data that Defendants collect, generate, and process on a
23 single day.” Dkt. 78. Defendants failed to comply with the court-ordered deadline,
24 and Plaintiffs were forced to file a motion to enforce the Court’s order. Dkt. 96-1. On
25 March 18, 2024, the Court granted Plaintiffs’ motion to enforce. The Court observed
26 that Defendant’s December 11 production was “incomplete in several respects and
27 did not comply fully with the November 27 Order.” Dkt. 117. The Court further noted
28 that a second production “of the data collected on February 20, 2024 has [also] not

1 given Plaintiffs the substantial equivalent of the documents required by the November
2 27 Order.” *Id.*

3 The Court then ordered as follows:

4 In an effort to give Plaintiffs the substantial equivalent of the documents
5 required by the November 27 Order, the Magistrate Judge now orders
6 that, on or before April 15, 2024, Defendants shall produce to Plaintiffs:
7 (1) documents reflecting all raw data of domestic non-TikTok users
8 collected by Defendants at any time during the 24-hour day of March
9 14, 2024; and (2) documents reflecting all uses of the data referenced
10 in (1), *supra*, (including, but not limited to, use by processing,
11 generation, aggregation, combination or reporting), which uses
12 occurred on March 14, 2024 or at any time between March 14, 2024
13 and March 28, 2024.

14 *Id.*

15 On April 15, 2024, Defendants made a supplemental production. While
16 Plaintiffs are in the process of reviewing the production, it is apparent that the
17 production fails to comply with the Court’s Orders for numerous reasons. First,
18 Defendants produced only 200,000 rows of raw data from within one hour of March
19 28, not “all raw data of domestic non-TikTok users collected by Defendants at any
20 time during the 24-hour day of March 14.”¹ Dkt. 117; Lee Decl. ¶ 2. Second, the
21 documents that Defendants produced to reflect certain, limited uses of data does not
22 appear to be connected to the 200,000 rows of raw data produced, in blatant violation
23 of the text and spirit of the Court’s second Order that Defendants must produce
24 “documents reflecting all uses of the data referenced in (1), *supra*,” *i.e.* the raw data
25 collected on March 14, 2024. *Id.* While review is ongoing, less than 0.05% of the
26 processed data appear to match the raw data produced. Third, Defendants have failed

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28 ¹ Defendants have offered to make available the remaining raw data at TikTok’s
“Transparency Center.” This offer does not comply with the Court’s order and does
not address the significant expense that Plaintiffs would incur to travel to TikTok’s
Transparency Center to undertake data review. In any case, even if the remaining raw
data were made available in this manner, it would not cure the other defects in
Defendants’ production.

1 to produce documents “reflecting *all* uses of the data.” Dkt. 117 (emphasis added).
2 Indeed, the production contains zero documents reflecting certain uses of non-TikTok
3 user data to which Defendants already admitted in interrogatory responses, such as
4 those relating to improvement of TikTok’s algorithms. *Id.*

5 **III. ARGUMENT**

6 **A. Plaintiffs will be prejudiced if the Motion to Enforce is heard
7 pursuant to regular noticed motion procedures.**

8 Pursuant to the Court’s operative Case Management Order (“CMO”), Plaintiffs’
9 Motion for Class Certification is currently due on May 3, 2024. Dkt. 85. While
10 Plaintiffs currently have a pending Motion to modify the CMO (and to extend the
11 deadline for the class certification motion to July 5, 2024), Dkt. 134, Plaintiffs must
12 still prepare to move for class certification by May 3 under the currently operative
13 CMO. Accordingly, Plaintiffs must seek an expedited briefing and hearing schedule
14 for this second motion to enforce to have any chance of obtaining relief before the
15 current deadline to file their class certification motion. Were Plaintiffs required to file
16 their Motion to Enforce according to the timeline prescribed by Local Rule 37, that
17 Motion would not be heard until mid-May at the earliest and would be rendered
18 effectively moot for class certification purposes.

19 For all the reasons explained in Plaintiffs’ previous briefing on this same issue,
20 the one-day sample data that Defendants continue to withhold in defiance of the
21 Court’s Orders is potentially relevant to class certification. *See* Dkts. 72, 77, 96, 99.
22 Plaintiffs have already been substantially and unfairly prejudiced by Defendants’
23 repeated and brazen failures to comply with the Court’s Orders. The prejudice would
24 be compounded if Plaintiffs were forced to file their class certification motion without
25 the opportunity to review and analyze the complete one-day sample data which the
26 Court has now twice ordered Defendants to produce.

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1 **B. Plaintiffs have acted diligently and are not at fault in creating the**
2 **exigency that gives rise to the need for *ex parte* relief.**

3 Plaintiffs seek the Court's relief to file on an expedited schedule less than 48
4 hours after receiving Defendants' third deficient production at the end of the day on
5 April 15, 2024. Plaintiffs are prepared to file a motion to enforce within an additional
6 two court days after the Court grants this Application.

7 While Defendants have indicated that they will oppose this Application, Lee
8 Decl. ¶ 3, they will not be materially prejudiced by the relief requested here. Both
9 parties will have the same amount of time (two days) to prepare their moving and
10 opposition papers. To the extent that Defendants complain that the turnaround for
11 these papers is short, that is entirely a problem of their own making, and in any case
12 will not cause prejudice. Defendants have now had a full five months to produce a
13 compliant one-day data sample and are more than familiar with Plaintiffs' positions
14 on this issue, as the parties have already fully briefed that issue twice in connection
15 with the prior motion to compel and motion to enforce. *See* Dkts. 72, 96.

16 **IV. CONCLUSION AND RELIEF REQUESTED**

17 Plaintiffs respectfully request leave for the following:

18 (1) Plaintiffs to be relieved from the joint stipulation requirements of Local
19 Rule 37-2;

20 (2) Plaintiffs to file their moving papers within two court days of the order
21 granting this Application;

22 (3) Defendants to file their opposition within two court days of the filing of
23 Plaintiffs' moving papers;

24 (4) Plaintiffs to file their reply papers within one court day of the filing of
25 Defendants' opposition; and

26 (5) Hearing to be set at the Court's earliest convenience before May 3, 2024.

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1 DATED: April 17, 2024

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